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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/336,612    06/18/99    BENDINER    B    9850/3

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EXAMINER

CROSS, L

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 10/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/336,612

Applicant(s)

Bendlner

Examiner

LaT ya Cr ss

Group Art Unit

1743



☒ Responsive to communication(s) filed on Aug 9, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-5 is/are pending in the application

Of the above, claim(s) 3-5 is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1 and 2 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on August 9, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/336,612 is acceptable and a CPA has been established. An action on the CPA follows. Claims 1-5 are pending. Claims 3-5 are withdrawn from consideration as being directed to non-elected subject matter.

### ***Declaration under 37 C.F.R. 1.132***

2. The declaration under 37 CFR 1.132 filed on September 8, 2000 is sufficient to overcome the rejection of claims 1 and 2 based upon both rejections given over Merciadetz et al '902 and Develter '226 under 35 U.S.C. 103.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,965,549 to Purwar et al (hereinafter Purwar et al '549).

Applicant's invention is directed to an aqueous solution comprising potassium sorbate dissolved in tap or deionized water at a concentration of 0.3% or higher and having a pH of 4.5 or higher.

Purwar et al '549 teaches aqueous pharmaceutical solutions which comprise *inter alia* potassium sorbate as a preservative. The potassium sorbate is disclosed as being an effective preservative at concentrations of preferably 0.05 to 0.5 weight percent (col. 4, lines 40-44). The pH of the solutions are disclosed as being preferably 4.75 (col. 4, lines 24-31).

Purwar et al '549 differ from the instantly claimed invention in that there is no specific example which uses 0.3 weight percent of potassium sorbate, however, since this amount is encompassed by the range of recited by the reference and is disclosed as being an effective amount for preserving, it would have been obvious to one of ordinary skill in the art to select this amount for the aqueous solutions.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 U.S.C. 103 in view of the teachings of Purwar et al '549.

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***Response to Arguments***

5. Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is (703) 305-7360. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LIC *812*

September 29, 2000

  
RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700